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Oliver Bremer

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EXAMINER

HENNING, MATTHEW T

ART UNIT

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2431

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/099,931	<b>Applicant(s)</b> BREMER, OLIVER	
	<b>Examiner</b> MATTHEW T. HENNING	<b>Art Unit</b> 2431	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 September 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-8,10-15,17-22,24-28,33 and 34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-8,10-15,17-22,24-28,33 and 34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 June 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

1           This action is in response to the communication filed on 9/30/2008.

2                           **DETAILED ACTION**

3                           *Response to Arguments*

4           Applicant's arguments filed 9/30/2008 have been fully considered and are not found  
5     persuasive.

6           Regarding the applicant's argument that the combination of references relied upon in  
7     rejecting the claims does not solve the same problem which the applicant set out to solve, the  
8     examiner does not find the argument persuasive. The fact that applicant has recognized another  
9     advantage which would flow naturally from following the suggestion of the prior art cannot be  
10    the basis for patentability when the differences would otherwise be obvious. See *Ex parte*  
11    *Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985). Further, whether the prior art solved  
12    the supposed "problem in the art" is not relevant. What is relevant is whether the prior art  
13    anticipated or rendered the claims obvious. In this case, the prior art renders the claim language  
14    obvious. If the applicant does not believe that the problem in the art would be solved by the  
15    combination of references applied below, then perhaps the applicant should carefully review the  
16    claim language to ensure that the heart of the invention is being accurately claimed.

17          Regarding the applicant's argument that the combination of prior art relied upon by the  
18    examiner does not have peer-to-peer consumption...without requiring assistance from the  
19    network infrastructure, the examiner does not find the argument persuasive. Applicant's  
20    arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that  
21    the claims define a patentable invention without specifically pointing out how the language of  
22    the claims patentably distinguishes them from the references. In response to applicant's

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arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In this case, the applicant has argued that each reference individually does not teach a certain claim feature (i.e. "consuming content by a mobile phone recipient without requiring assistance from network infrastructure in the wireless network"). However, no reference alone has been relied upon as teaching this limitation. Rather, it is the combination of the references that has shown this limitation to be obvious. As such, because the applicant has provided no argument regarding the combination, as discussed in the rejection, the examiner does not find the argument persuasive.

Because the examiner does not find the arguments, with regards to the rejection of the claims under 35 USC 103(a) to be persuasive, the examiner has maintained the rejection presented below.

All objections and rejections not set forth below have been withdrawn.

Claims 1, 3-8, 10-15, 17-22, 24-28, and 33-34 have been examined.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-4, 6-8, 10-11, 13-15, 17, 19-21, 27-28, and 34 rejected under 35

U.S.C. 103(a) as being unpatentable over Safadi et al. (US Patent Application Publication

Number 2002/0147686) hereinafter referred to as Safadi, and further in view of Bloebaum et al. (US Patent Number 7,149,534) hereinafter referred to as Bloebaum, and further in view of Hans-Jörg Vögel et al. ("GSM Switching, Services and Protocols: Second Edition") hereinafter referred to as Vögel.

Regarding claims 1 and 28, Safadi disclosed a method comprising: forwarding peer-to-peer content between two devices (Safadi Fig. 1 Elements 10 and 30) communicating in a wireless network via a network infrastructure (Safadi Fig. 1 Element 20 and paragraph [0032]), where a wireless sender (10) encrypts protected content or content encryption key (Safadi Paragraphs [0036] - [0037]) and a wireless recipient (30) consumes the protected content without requiring content personalization assistance from the network infrastructure of the wireless network (See Safadi Paragraph 0044), and that the receiver device was a mobile phone (Safadi Paragraph [0033]), but Safadi failed to specifically teach that the sender device was a mobile phone; that the sender sends an initial message having an international mobile equipment identity, a mobile phone sender name, or mobile station international integrated subscriber digital network number. However, Safadi did state that the "transmitting device of the present invention includes, but is not limited to the Personal Versatile Recorder (10) as described hereinabove...or any device that can output information in the form of a digital or analog signal".

Bloebaum teaches a system wherein, through a cellular network, mobile phones are able to communicate content, such as applications or music, between the mobile phones (Bloebaum Fig. 1 and Col. 4 Lines 59-61).

It would have been obvious to the ordinary person skilled in the art at the time of invention to have employed the teachings of Bloebaum in the content sharing system of Safadi

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1 by implementing the transmitting device as a cell phone. This would have been obvious because  
2 the ordinary person skilled in the art would have been motivated to allow multimedia content to  
3 be shared between friends using their cell phones.

4       Vögel teaches that in GSM, which was a very well know and widely utilized mobile  
5 communications standard at the time of invention, communicating devices register with the  
6 network by sending the International Mobile Station Equipment Identity (IMEI) (Vögel Page 31  
7 Section 3.2.1).

8       It would have been obvious to the ordinary person skilled in the art at the time of  
9 invention to have employed the teachings of Vögel in the content sharing system of Safadi and  
10 Bloebaum, by having each cell phone provide its IMEI to the network in "an initial message".  
11 This would have been obvious because the ordinary person skilled in the art would have been  
12 motivated to follow an widely accepted standard as well as to recognize obsolete, stolen, or  
13 nonfunctional equipment in the network.

14       Regarding claim 8, Safadi disclosed a wireless network comprising: at least two wireless  
15 terminals (Safadi Fig. 1 Elements 10 and 30) and a network infrastructure (20) for forwarding  
16 peer-to-peer content from one wireless terminal (10) to another wireless terminal (30) (Safadi  
17 Fig. 1 Element 20 and Paragraph [0032]); the at least two wireless terminals having a peer-to-  
18 peer forwarding/reception of digital right management protected content module configured for  
19 **either** encrypting **or** consuming protected content without content personalization assistance  
20 from the network infrastructure (See Safadi Paragraphs 0032, 0036-0037, and 0044), and that the  
21 receiver terminal was a mobile phone (Safadi Paragraph [0033]), but Safadi failed to specifically  
22 teach that the sender device was a mobile phone; that the peer-to-peer forwarding/reception of

1 digital rights management protected content module of each terminal is configured for either  
2 sending or receiving an initial message having an international mobile equipment identity, a  
3 mobile phone sender name, or mobile station international integrated subscriber digital network  
4 number. However, Safadi did state that the "transmitting device of the present invention  
5 includes, but is not limited to the Personal Versatile Recorder (10) as described hereinabove...or  
6 any device that can output information in the form of a digital or analog signal".

7 Bloebaum teaches a system wherein, through a cellular network, mobile phones are able  
8 to communicate content, such as applications or music, between the mobile phones (Bloebaum  
9 Fig. 1 and Col. 4 Lines 59-61).

10 It would have been obvious to the ordinary person skilled in the art at the time of  
11 invention to have employed the teachings of Bloebaum in the content sharing system of Safadi  
12 by implementing the transmitting device as a cell phone. This would have been obvious because  
13 the ordinary person skilled in the art would have been motivated to allow multimedia content to  
14 be shared between friends using their cell phones.

15 Vögel teaches that in GSM, which was a very well know and widely utilized mobile  
16 communications standard at the time of invention, communicating devices register with the  
17 network by sending the International Mobile Station Equipment Identity (IMEI) (Vögel Page 31  
18 Section 3.2.1).

19 It would have been obvious to the ordinary person skilled in the art at the time of  
20 invention to have employed the teachings of Vögel in the content sharing system of Safadi and  
21 Bloebaum, by having each cell phone provide its IMEI to the network in "an initial message".  
22 This would have been obvious because the ordinary person skilled in the art would have been

1 motivated to follow an widely accepted standard as well as to recognize obsolete, stolen, or  
2 nonfunctional equipment in the network.

3  
4       Regarding claim 15, Safadi disclosed a wireless terminal (10 or 30) comprising: one or  
5 more modules for operating in a wireless network having another wireless terminal (10 or 30)  
6 and a network infrastructure (20) for forwarding peer-to-peer content from the wireless terminal  
7 (10) to the other wireless terminal (30) (Safadi Fig. 1 Element 20 and paragraph [0032]); a peer-  
8 to-peer forwarding/reception of digital rights management protected content module configured  
9 for either encrypting, consuming, or a combination thereof, protected content without content  
10 personalization assistance from the network infrastructure (See Safadi Paragraphs 0032, 0036-  
11 0037, 0042 and 0044) and that the receiver terminal was a mobile phone (Safadi Paragraph  
12 [0033]), but Safadi failed to specifically teach that the sender device was a mobile phone; that  
13 the peer-to-peer forwarding/reception of digital rights management protected content module of  
14 each terminal is configured for either sending or receiving an initial message having an  
15 international mobile equipment identity, a mobile phone sender name, or mobile station  
16 international integrated subscriber digital network number. However, Safadi did state that the  
17 “transmitting device of the present invention includes, but is not limited to the Personal Versatile  
18 Recorder (10) as described hereinabove...or any device that can output information in the form  
19 of a digital or analog signal”.

20       Bloebaum teaches a system wherein, through a cellular network, mobile phones are able  
21 to communicate content, such as applications or music, between the mobile phones (Bloebaum  
22 Fig. 1 and Col. 4 Lines 59-61).



1           It would have been obvious to the ordinary person skilled in the art at the time of  
2 invention to have employed the teachings of Bloebaum in the content sharing system of Safadi  
3 by implementing the transmitting device as a cell phone. This would have been obvious because  
4 the ordinary person skilled in the art would have been motivated to allow multimedia content to  
5 be shared between friends using their cell phones.

6           Vögel teaches that in GSM, which was a very well know and widely utilized mobile  
7 communications standard at the time of invention, communicating devices register with the  
8 network by sending the International Mobile Station Equipment Identity (IMEI) (Vögel Page 31  
9 Section 3.2.1).

10           It would have been obvious to the ordinary person skilled in the art at the time of  
11 invention to have employed the teachings of Vögel in the content sharing system of Safadi and  
12 Bloebaum, by having each cell phone provide its IMEI to the network in "an initial message".  
13 This would have been obvious because the ordinary person skilled in the art would have been  
14 motivated to follow an widely accepted standard as well as to recognize obsolete, stolen, or  
15 nonfunctional equipment in the network.

16  
17           Regarding claim 3, Safadi, Bloebaum and Vögel disclosed that the mobile phone  
18 recipient sends a device certificate having a public key to a wireless sender (See Safadi  
19 Paragraphs 0036 and 0041).

20           Regarding claims 4, 11, 17, and 34, Safadi, Bloebaum and Vögel disclosed that that the  
21 mobile phone sender personalizes the protected content or content encryption key for the mobile  
22 phone recipient (See Safadi Paragraphs 0036-0037 and 0044).

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1           Regarding claims 6, 13, and 20, Safadi, Bloebaum and Vögel disclosed that the mobile  
2 phone recipient verifies forwarded protected content received from the mobile phone sender by:  
3 verifying the device certificate of the mobile phone sender (See Safadi Paragraph 0043); and  
4 applying a private key of the mobile phone recipient in order for the recipient to consume the  
5 protected content (See Safadi Paragraphs 0036-0037 and 0044).

6           Regarding claims 7, 14, and 21, Safadi, Bloebaum and Vögel disclosed that the protected  
7 content is digital rights management protected content (See Safadi Paragraph 0034).

8           Regarding claims 10, and 19, Safadi, Bloebaum and Vögel disclosed that the peer-to-peer  
9 forwarding/reception of DRM protected content module of the mobile phone recipient sends a  
10 device certificate having a public key to the mobile phone sender (See Safadi Paragraphs 0036-  
11 0037 and 0042).

12           Regarding claim 27, Safadi, Bloebaum and Vögel disclosed that the initial message  
13 includes a device certificate to the mobile phone recipient (See Safadi Paragraph 0042).

14  
15           Claims 5, 12, 18, 22, 26, and 33 are rejected under 35 U.S.C. 103(a) as being  
16 unpatentable over Safadi, Bloebaum and Vögel as applied to claims 4, 8, and 17 respectively  
17 above, and further in view of Mott et al. (US Patent Number 6,170,060) hereinafter referred to as  
18 Mott.

19           Regarding claims 5, 12, and 18, Safadi, Bloebaum and Vögel disclosed that the steps for  
20 personalizing include: encrypting the content or content encryption key using a public key of the  
21 mobile phone recipient (See Safadi Paragraphs 0036-0037); and sending the protected content or  
22 content encryption key and a device certificate of the mobile phone sender to the wireless

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1 recipient (See Safadi Paragraphs 0042 and 0044), but failed to disclose signing encrypted content  
2 or content encryption key using a private key of the mobile phone sender, or sending the  
3 protected content with a device certificate of the sender.

4 Mott teaches that a digital signature should be appended to downloaded content in order  
5 to be able to verify the data (See Mott Col. 11 Paragraph 2).

6 It would have been obvious to the ordinary person skilled in the art at the time of  
7 invention to employ the teachings of Mott in the content distribution system of Safadi, Bloebaum  
8 and Vögel by including a signature of the content with the content. This would have been  
9 obvious because the ordinary person skilled in the art would have been motivated to provide a  
10 means for the recipient to verify the integrity of the data. Further, it was well known in the art at  
11 the time of invention that the certificate of a digital signor could be included with the signed  
12 object for transmission and therefore it would have been obvious to the ordinary person skilled in  
13 the art at the time of invention to have done so.

14 Regarding claim 22, the combination of Safadi, Bloebaum, Vögel and Mott disclosed a  
15 method comprising: forwarding a protected content or content encryption key from a first mobile  
16 phone to a second mobile phone (Safadi Fig. 1 Element 20 and paragraph [0032] and Bloebaum  
17 Col. 4 Lines 59-61) in a cellular network having a network infrastructure (Safadi Fig. 1 Element  
18 20 and paragraph [0032]); sending a digital rights management device certificate containing a  
19 public digital rights management key from the second mobile phone to the first mobile phone  
20 (See Safadi Paragraph 0041); verifying the public digital rights management key by the first  
21 mobile phone (See Safadi Paragraph 0041); personalizing digital rights management content or  
22 content encryption key by encryption using a public key of the second mobile phone (See Safadi

Paragraphs 0036-0037 and 0044); signing encrypted digital rights management content or content encryption key using a private digital rights management key of the first mobile phone (See the rejection of claim 5 above and Mott Col. 11 Paragraph 2); sending encrypted and signed digital rights management content or content encryption key together with a digital rights management device certificate of the first mobile phone from the first mobile phone to the second mobile phone (See the rejection of claim 5 above and Mott Col. 11 Paragraph 2); verifying the digital rights management device certificate of the first mobile phone by the second mobile phone (See Safadi Paragraph 0043); and applying a private digital rights management key of the second mobile phone, if the private digital rights management key of the first mobile phone is verified, in order for the second mobile to consume the protected content without content personalization assistance from the network infrastructure of the cellular network(See Safadi Paragraph 0044).

Regarding claim 26, see Safadi Paragraph 0042.

Regarding claim 33, Safadi, Bloebaum, Vögel and Mott disclosed that the peer-to-peer forwarding/reception of DRM protected content protocol module of a wireless sender sends an initial message having either an international mobile equipment identity, a sender name or mobile station international Integrated subscriber digital network number to a wireless recipient (See Safadi Paragraph 0036).

Claims 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Safadi, Bloebaum, Vögel and Mott as applied to claim 22 above, and further in view of Gustafsson (US Patent Number 6,424,841).

Safadi, Bloebaum, Vögel and Mott disclosed sending encrypted and signed digital rights management content to the first terminal and verifying the same in the first terminal (See the rejection of claim 22 above), but failed to disclose sending confirmation or error messages. However, Safadi, Bloebaum, Vögel and Mott did disclose that the communications were between cell phones in a cellular network (Bloebaum Fig. 1 and Col. 4 Lines 59-61).

Gustafsson teaches that in a mobile phone system, acknowledgment messages should be provided to the sender of a message by the recipient (See Gustafsson Col. 2 Paragraphs 3-4).

It would have been obvious to the ordinary person skilled in the art at the time of invention to employ the teachings of Gustafsson in the content distribution system of Safadi and Mott by having the receiver either acknowledge proper receipt of the content or send an error message to the sender. This would have been obvious because the ordinary person skilled in the art would have been motivated to ensure proper receipt of the content.

## Conclusion

Claims 1, 3-8, 10-15, 17-22, 24-28, and 33-34 have been rejected.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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1 however, will the statutory period for reply expire later than SIX MONTHS from the mailing  
2 date of this final action.

3 Any inquiry concerning this communication or earlier communications from the  
4 examiner should be directed to MATTHEW T. HENNING whose telephone number is  
5 (571)272-3790. The examiner can normally be reached on M-F 8-4.

6 If attempts to reach the examiner by telephone are unsuccessful, the examiner's  
7 supervisor, Kim Vu can be reached on (571) 272-3859. The fax phone number for the  
8 organization where this application or proceeding is assigned is 571-273-8300.

9 Information regarding the status of an application may be obtained from the Patent  
10 Application Information Retrieval (PAIR) system. Status information for published applications  
11 may be obtained from either Private PAIR or Public PAIR. Status information for unpublished  
12 applications is available through Private PAIR only. For more information about the PAIR  
13 system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR  
14 system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would  
15 like assistance from a USPTO Customer Service Representative or access to the automated  
16 information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

17  
18  
19 /Matthew T Henning/  
20 Examiner, Art Unit 2431

21  
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